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CHARLES ELMORE CROP
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 750.

AMERICAN SURETY COMPANY OF NEW YORK, *Petitioner,*

v.

UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF THE ASSOCIATION OF CASUALTY AND SURETY COMPANIES, AMICUS CURIAE.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Introduction.

This brief is filed on behalf of the Association of Casualty and Surety Companies, a membership association composed of 68 corporations which engage in the casualty and surety business. Under the applicable statutes and regulations, 44 of these member corporations, which are qualified to become sureties on bonds running to the United States, write post office bonds or other federal official bonds. The decision in this case directly affects in excess of three hundred thousand bonds written by these companies and now outstanding.

Opinion Below.

The opinions of the District Court (R. 12, 26) are reported in 77 Fed. Supp. 318, 320 while the opinion of the Court of Appeals (R. 41) is reported in 172 F (2d) 135.

The Question.

The question for decision is whether or not a bond of indefinite duration in the penal sum of $2,000.00 conditioned for the faithful performance of the principal's duties as a postal clerk (1) creates a liability limited to $2,000.00 for breaches occurring during the entire time it was in force, or (2) whether the payment of an annual premium by the principal in said bond to the surety thereon creates a new and independent obligation for breaches to the extent of $2,000.00 for each year it was in force.

Statement of the Case.

William H. Welge, a clerk in the United State Post Office at Essex, Connecticut (a second class post office) gave a bond dated October 26, 1935 to the United States in the penal sum of $2,000.00 (R. 17). Petitioner was the corporate surety thereon. The bond (R. 18, 10) was executed on Post Office Department Form 1117—a prescribed form of the Department. Its condition was that Welge should faithfully discharge all the duties and trusts imposed on him as a clerk in the Post Office at Essex, Connecticut, either by law or by the rules or regulations of the Post Office Department and should faithfully account for, deliver, and pay over to the proper official or person all monies, mail matter, and other property of every kind which should come into his hands by virtue of his occupancy of any position in the Post Office to which he might be appointed. The bond contained no termination date.

The bond stated that the premium rate was $.65 per $1,000.00 and that the premium charge for a like bond during the year 1908 was $2.00 per $1,000.00 (R. 19). The

total premium charged on this basis was $1.30. Annual premium payments were made to the surety by Welge from 1935 to 1944 inclusive (R. 19). During that period Welge failed to account for and pay over to the Post Office Department a total of $7,949.72 (R. 20). In no single year did the amounts for which Welge failed to account exceed $2,000.00.

A total of $4,083.75 was recovered by the United States from Welge and applied against his defalcations for the period from October 26, 1935 to October 26, 1939, thus reducing the balance due from him to $3,865.97 (R. 20). For this amount the United States made claim in an action brought against the surety in the United States District Court for the District of Connecticut. The surety admitted liability for $2,000.00, but denied liability for the remainder of the sum claimed.

Purpose of Brief.

It is the purpose of this brief to draw attention to the importance of obtaining an authoritative decision as to the extent of liability incurred upon bonds given by Postal and other employees and officials of the United States pursuant to the statutes requiring such bonds and regulating the practice in connection therewith. The decision of the court below creates a total penalty of $20,000.00 in the instrument. This result reached by the courts below cannot be sustained on the basis of the amendment in 1928 to the statute governing the administration of bond matters. The conclusion of the courts below has been reached without the slightest suggestion in the statute, or in the legislative history of the change, that such a result was intended. It is a conclusion which has been reached in face of the fact that the other alternate methods of providing security for such bonds have clear limitations which are wholly inconsistent with the result reached by the courts below.

ARGUMENT.

The bond here involved was given under the provisions of the Act of June 13, 1898, 39 U.S.C. 132, 30 Stat. 444 (App. 13) and the Act of March 2, 1895, 6 U.S.C. 3, 28 Stat. 807 as modified by the Act of March 8, 1928, 45 Stat. 247 (now 61 Stat. 646, App. 13). 39 U.S.C. 132 authorized, and § 473 of the Postal Regulations required, the taking of the bond. 6 U.S.C. 3 dealing with continuance of liability on official bonds, requires such bonds to be renewed every four years. The amendment of March 8, 1928 provided that the payment and acceptance of the annual premium on corporate surety bonds furnished by postal offices and employees should "be a compliance with the requirement for the renewal of such bonds" within the meaning of the statute. By a further enactment of March 31, 1944, 58 Stat. 135, the same proviso was extended to officers and employees of other civilian agencies of the United States and bonded officers and enlisted men of the Army, Navy, Marine Corps and Coast Guard, thus making the proviso one of general application and increasing the scope and importance of the decision here.

The basic provisions of both 39 U.S.C. 132 and 6 U.S.C. 3, the prescribed bond form with its detailed instructions, all contemplate that the bonds required shall be surety bonds, but there is no requirement that the sureties be corporate. It is only by virtue of the Act of August 13, 1894, 28 Stat. 279, 6 U.S.C. 6, that corporate sureties are permitted to qualify on these bonds.[1] The effect of the decisions below is to achieve a different coverage from the same bond form, depending upon the election of the employee as to the form of security. If the surety were corporate, the decision creates a new bond for each year whereas if the surety were personal, or if a deposit of

[1] Of particular interest and significance is the final sentence of that section: "No officer or person having the approval of any bond shall exact that it shall be furnished by a guaranty company or by any particular guaranty company".

Government securities were made, the coverage is limited to the penal sum of the bond.

39 U.S.C. 814 authorizes "in lieu of either corporate or personal surety" the deposit of Liberty Bonds. 6 U.S.C. 15 authorizes the deposit of United States bonds or notes in a sum equal at par to the amount of the penal bond required to be furnished. Treasury Circular No. 154 Revised, issued February 6, 1935 (App. 27) amending and supplementing Treasury Circular No. 154 dated April 30, 1926 provides in detail the mechanics for the deposit of such bonds, notes or other obligations of the United States in lieu of sureties. It is to be noted that where securities are deposited a bond on Form F as prescribed in the circular is required, but without sureties, either personal or corporate.

As a consequence of these provisions the employee is given the option of using one of the three methods provided: namely, (1) he may give bond with two personal sureties who shall qualify themselves by establishing ownership in unencumbered real estate, in sums equal in the aggregate to double the penalty of the bond (see Instruction 9, Bond Form R. 10); (2) he may give bond with notes or other Government obligations as collateral security as specified in Treasury Department Circular 154 Revised; or (3) he may give a bond with approved corporate surety. In the first instance the sureties are considered adequate if their property holdings in the aggregate are double the penalty of the bond while in the second instance the bond is acceptable if the securities deposited with it are equal in value at par to the penal sum named in the bond. In the third case it is sufficient that the surety be upon the approved list of the Treasury Department.

Prior to the amendment of 6 U.S.C. 3 in 1928, all official bonds were mandatorily required to be renewed quadrennially. The Comptroller-General in response to an inquiry from the Postmaster General as to whether the annual payment of premiums on corporate surety bonds could be con-

sidered as a compliance with the quadrennial renewal requirement, advised that:

> "There appears nothing in the provision of the Act of March 2, 1895, here in question, to warrant a conclusion that the annual payment of premiums on such bonds constitutes a renewal thereof as required by statute. What is contemplated under the requirement is such a fixing of liability with respect to time that the accounts may be finally closed and the liabilities definitely determined under the old bond and new accounts opened up under the new bond. While said provision is addressed to the administrative officers whose duty it is to take and approve official bonds, and impose on them the responsibility of causing all such bonds to be renewed every four years, good accounting procedure requires that the failure to renew be called to the attention of the administrative office concerned when this office is called upon to approve a requisition for funds under a bond dated more than four years prior to such requisition, and to take such further steps as may be deemed necessary to protect the fiscal interests of the United States in any particular case." 7 Comp. Gen. 43, July 16, 1927.

In light of this ruling it was obvious that the Post Office Department could not depart from a compliance with the quadrennial renewal provision of the statute. Accordingly, the amendment of March 8, 1928 followed at the request of the Post Office Department.

The report of the House of Representatives, Committee on the Post Office, January 24, 1928, Report No. 383, recited the administrative inconvenience connected with the quadrennial renewal of bonds, pointing out that so long as the Treasury approved the bonding company as acceptable, no benefit was derived from requiring a new bond, but that the Post Office could require a new bond if the then existing bond were not sufficient. The report of the Senate Committee on Post Office and Post Roads, Congressional Record March 2, 1928, page 3936 advised that the proposed amendment did not make any change in the status of the bond

whatever, but that it would continue on beyond the four years where the employee paid his annual premium.

In 1944 the Navy Department requested an amendment which would excuse its personnel from the quadrennial renewal of bonds by placing them in the same category with postal employees. While the bill was under consideration similar requests came forward both from the War Department and the Treasury, which was of the belief that the legislation should apply uniformly to the entire federal service. In the hearings upon that bill before the Committee on Naval Affairs of the House of Representatives [2] the representative on behalf of the Navy Department testified:

> Commander Brown. "* * * The practical effect would be that when the officer goes to accountable duty and takes out a bond, he is required by law in the Navy to be bonded as long as he is on that accountable duty, whether it is two years or six years, and the original bond that he takes out when he goes on duty continues as long as he is on that duty, and he is required to make payment of the premium."
>
> * * * * * * * * * *
>
> The Chairman. "Now you propose to continue him under the bond by merely a continued payment of the premium.
>
> Commander Brown. "A continued payment of the premium which would continue the old bond instead of the renewal.
>
> * * * * * * * * * *
>
> The Chairman. "Then the renewal of the premium does not cost as much as writing a new bond?
>
> Commander Brown. "There is no difference in the cost to the individual officers.
>
> The Chairman. "Is it the same?
>
> Commander Brown. "It is the same. Of course, there is the paper work involved."

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[2] Hearing on S. 1647, No. 200, February 25, 1944.

There was also submitted to the committee a letter from Secretary of the Navy Knox in which he said:

> "The amendment to the act of March 2, 1895, by the act of March 8, 1928 (45 Stat. 247), was enacted apparently at the behest of the Post Office Department following the receipt by that Department of an opinion of the Comptroller General (7 Comp. Gen. 43) to the effect that annual payment of premiums on corporate surety bonds could not be construed as compliance with the provisions of the act of March 2, 1895, requiring renewal of such bonds every 4 years.
>
> "In urging a relaxation of the requirement for renewal of bonds, the Postmaster General in a letter to the Comptroller General dated June 16, 1927, invited attention to the large amount of effort and expense incident thereto and the fact that little or nothing was accomplished in protecting the Government's financial interest by having a new document executed every 4 years. These arguments would apply with equal or greater force to the situation now prevailing in the Navy.
>
> "The proposed legislation, if enacted into law, would involve no additional expense to the Government."

The Committee then reviewed the current practice of auditing both by the departments involved and the General Accounting Office of the accounts of financial and other fiscal officers. The bill was favorably reported and passed. The Hearing on this bill also contains some very enlightening material on the background and purpose of the 1928 amendment and confirms what has heretofore been stated with regard thereto. See Report (App. 14).

With the amendment of 1944 the Treasury issued on July 10, 1944, Department Circular No. 745 instructing the heads of executive departments, establishments and agencies as to the procedure to be followed in the obtaining of original premium receipts evidencing the payment of premiums pursuant to the amendment. On March 18, 1946, this circular was revised (Department Circular No. 745, Revised, App. 34) by the issuance of another which reverted to the

practice prior to the amendment, i. e., of requiring the execution of a new bond at the end of each four year period.[3] This action by the Treasury in effect nullified the application of the amendment with respect to all officers and employees whose bonds were to be received and approved by the Secretary of the Treasury.

When the amendment of 1944 was under consideration, House Report 1210 (78th Congress, 2nd Session), recognized inferentially that there would be no increase in the amount of protection received by the Government:

> "By eliminating the requirement for renewal of bonds, the large amount of clerical and administrative work can be dispensed with and substantial savings in money and manpower will be effected. This will be accomplished without lessening in any appreciable degree the protection now afforded the Government."

The full authority granted to the administrative branch to determine the amount of bond penalties is an ample means of protecting the Government's interest. The Senate Committee on Naval Affairs reporting[4] on the same bill referred to the earlier amendment and the advice of the Postmaster General in 1927 to the effect that the supplying of a new bond every four years accomplished little or nothing in protecting the Government's financial interests, while on the other hand, the closing of the old account and the setting up of a new one in connection with the giving of the new bond represented a practice often difficult and frequently impossible of execution during war times. (See App. 23.)

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[3] The revised circular recited that operation under the statutory amendment had been difficult of execution and had led to inconvenience and added expense as a result of which the Treasury had determined that it would be to the best interest of the Government to revert to the former quadrennial method of bond renewal. As to the practice of the Treasury Department with regard to the statute prior to the 1944 amendment and the Regulations following it, see Treasury Circular 65, App. 25.

[4] Report No. 676—78th Congress, 2nd Session.

From 1928 until 1944 the other branches of the Government were still required to renew the bonds of their employees quadrennially just as they had since the enactment of the basic statute even though annual premiums were paid during such period in the same customary manner as they had been paid since 1894 when corporate sureties were first permitted to qualify by 6 U.S.C. 6. There is nowhere in the legislative history of the statute nor in administrative practice under it, any suggestion that the security required from postal employees during that period was to be different from or greater than that required from other Government employees. This is further confirmed by the fact that no change was made in the requirements with respect to personal sureties or the deposit of Government obligations as collateral.

From the foregoing it is at once apparent that the amendments of 1928 and 1944 did not intend to make any requirement for an increased coverage, but merely to obviate the mechanical step of renewing bonds every four years. The fact that the alternate methods of complying with the statute by giving personal surety or depositing Government bonds remained unchanged is clear evidence that the amount of coverage required was not to be increased. The action of the Treasury Department in declining to accept the practice authorized by the 1944 amendments and treating the earlier quadrennial renewal practice as its equivalent establishes clearly the administrative construction of the meaning of the statute by the department having principal charge of such matters and best qualified to determine proper practice in connection therewith.

The payment or non-payment of a premium by the principal to his surety does not affect the liability of the surety to the obligee named in the bond. The instant bond would have been no less effective if no reference to the premium had been made therein. The true significance of the premium reference is to be gleaned from the presumed purpose of 6 U.S.C. 14 and the final Instruction on the prescribed

bond form (R. 10). The decision of the court below holds that the payment of an annual premium causes an annual cumulation of liability under a statute which provides merely that an annual payment and acceptance shall be a compliance with a requirement for a quadrennial renewal.

The opinion of the dissenting judge in the court below (R. 41) is a clear and succinct statement of the law on the proposition that the surety's liability is limited to $2,000.00. It represents a reasonable construction of the terms of the bond.[5]

The opinion of the majority in the court below concedes that the amendment to the statute which authorized the Post Office Department to forego the quadrennial renewal of its employees bonds "should be considered limited to its stated purpose." Its stated purpose was to make "the payment and acceptance of the annual premiums on corporate surety bonds furnished by postal officers and employees . . . a compliance with the requirement for the renewal of such bonds within the meaning of sections 1 to 3 of this title."

There is nothing in the statute that can be construed as a requirement for the annual renewal of such bonds. It is true that the "officer whose duty it is to take and approve" such bonds may require them "to be renewed or strengthened" oftener than every four years, "if he deem such action necessary." There is nothing in the record to show the exercise of such discretionary power and it is not contended by the Government that any requirement for the renewal or strengthening of the bond was made.

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[5] It is noteworthy that no reported cases can be found holding the surety for cumulative liability on postal bonds or other federal official bonds, notwithstanding that corporate sureties have qualified on such bonds since 1894 and premiums have been paid annually on such bonds ever since. A letter from Chief Post Office Inspector James J. Doran published in the May 1948 issue of the Postmasters Gazette indicates that the theory now contended for by the Government in this case is a reversal of previous understanding of the meaning of the bond by the administrative staff of the Post Office itself. (See App. 35.)

Nevertheless the court below reached a result which entailed a potential liability ten times the penal sum which was named in the bond at the behest of the postal authorities.

CONCLUSION.

It is submitted that the plain terms of the bond create a liability on the part of the surety for no more than the penal sum named in the instrument, and that when the statute and the bond are read together, nothing can be found to justify holding that the surety's obligation was cumulative from year to year. It is urged that the writ be granted in order that a decision may be had as to the responsibility of the sureties on bonds such as these and in order that a guide be furnished for the administrative officers of the Government both in fixing penalties of new bonds and enforcing the Government's rights on subsisting bonds.

Respectfully,

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Washington, D. C.

Attorney for The Association of Casualty and Surety Companies. Amicus Curiae.

APPENDIX.

39 U.S. C. 132:

Bonds of assistant postmasters and cashiers at first, second, and third class offices. Assistant postmasters and cashiers at first, second, and third class post offices, and when deemed necessary by the Postmaster General for the better protection of the interests of the Government any other employees in such offices, shall, before entering upon the duties of their office, give bond to the United States with good and approved security, and in such penalty as the Postmaster General shall prescribe, conditioned for the faithful discharge of all duties and trusts imposed upon them either by law or the rules and regulations of the Post Office Department. (June 13, 1898, c. 446, § 3, 30 Stat. 444).

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6 U.S.C. § 3:

Renewal: continuance of liability

Every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their date, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor. The nonperformance of any requirement of the provisions of sections 1 to 3 of this title, or of that part of section 27 of title 19 relating to transmitting copies of oaths to the Secretary of the Treasury, on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States. The liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal. Nothing in said sections shall be construed to repeal or modify section 38 of title 39: *Provided*, That the payment and acceptance of the annual premium on corporate surety bonds furnished by postal officers and employees, officers and employees of other civilian agencies of the United States and bonded officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard shall be a compliance with the requirement for the renewal of such bonds within the meaning of sections 1 to 3 of this title. July 30, 1947, c. 390, § 1, 61 Stat. 646.

[No. 200]

HEARING ON S. 1647 TO AMEND THE ACT APPROVED MARCH 2, 1895, AS AMENDED

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NAVAL AFFAIRS,

Washington, D. C., Friday, February 25, 1944.

The committee met at 10:30 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. We will take up S. 1647.

(The bill referred to and the accompanying report are as follows:)

[S. 1647, 78th Cong., 2d sess.]

AN ACT To amend the Act approved March 2, 1895, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act of Congress approved March 2, 1895 (28 Stat. 807), as amended by an Act approved March 8, 1928 (45 Stat. 247), is further amended by inserting in the third line of the proviso as it appears on page 247 of volume 45 of the United States Statutes at Large, after the word "employees" the following: "and bonded officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard."

Passed the Senate February 15 (legislative day, February 7), 1944.

Attest:

EDWIN A. HALSEY, *Secretary.*

[No. 174]

TO AMEND THE ACT APPROVED MARCH 2, 1895, AS AMENDED (H. R. 4030). MR. VINSON OF GEORGIA

NAVY DEPARTMENT,

Washington, January 14, 1944.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to amend the act approved March 2, 1895, as amended.

The purpose of the proposed bill is to amend the act approved March 2, 1895 (6 U.S.C. 3), as amended, so that it will provide that the payment and acceptance of the annual premiums on corporate surety bonds shall be a compliance with the requirement for renewal of such bonds of bonded officers and enlisted men of the Navy, Marine Corps, and Coast Guard. At present the law so provides as to postal officers and employees and the bill would extend the provision to cover bonded officers and enlisted men of the Navy, Marine Corps, and Coast Guard.

Under the act of March 2, 1895, every official charged with the approval of official bonds is required to cause all bonds under his cognizance to be renewed every 4 years or oftener if deemed necessary. Treasury Department Circular No. 197 issued December 1, 1898 (5 Comp. Dec. 988) requires that, upon the execution of a new bond, the bonded officer or man must close out his accounts under the old bond and deposit any unexpended balances before any advances are made under the new bond.

Literal compliance with these instructions in a number of cases is impossible and, with the approval of the Comptroller General, they have been modified to permit an officer to deposit funds needed for immediate use with some other proper disbursing officer, if it is not practicable to deposit any unexpended balances. When even this procedure is not feasible, officers outside the United States have retained their unexpended balances but have had such balances verified by two disinterested persons and have supported their accounts current under the old bonds with certificates signed by such persons.

To follow any of the above proceedings is impossible in many cases, particularly in time of war and the proposed bill, by eliminating the requirement for formal renewal of bonds every 4 years, would correct such situations.

The amendment to the act of March 2, 1895, by the act of March 8, 1928 (45 Stat. 247), was enacted apparently at the behest of the Post Office Department following the receipt by that Department of an opinion of the Comptroller General (7 Comp. Gen. 43) to the effect that annual payment of premiums on corporate surety bonds could not be construed as compliance with the provisions of the act of March 2, 1895, requiring renewal of such bonds every 4 years.

In urging a relaxation of the requirement for renewal of bonds, the Postmaster General in a letter to the Comptroller General dated June 16, 1927, invited attention to the large amount of effort and expense incident thereto and the fact that little or nothing was accomplished in protecting the Government's financial interests by having a new document executed every 4 years. These arguments would apply with equal or greater force to the situation now prevailing in the Navy.

The proposed legislation, if enacted into law, would involve no additional expense to the Government.

The Navy Department recommends enactment of the proposed legislation.

The Navy Department has been advised by the Bureau of the Budget that there would be no objection to the submission of the proposed legislation to the Congress.

Sincerely yours,

FRANK KNOX.

The CHAIRMAN. We have a letter from the Treasury Department on this bill that I have here.

Commander Brown, tell us what this bill is about.

STATEMENT OF COMMANDER PIERSON P. BROWN, BUREAU OF SUPPLIES AND ACCOUNTS, NAVY DEPARTMENT

Commander BROWN. I have a short statement here that I would like to present to the committee.

The CHAIRMAN. Will you read the letter from the Treasury Department, please?

Commander BROWN. Yes. I will make this statement and will then be in position to comment on that letter, Mr. Chairman. [Reading:]

Under the provisions of the act of March 2, 1895, every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every 4 years, but he may require bonds to be renewed or strengthened oftener if he deems such action necessary. Treasury Department regulations require that when a new bond is given, the disbursing officer close his accounts under the former bond and deposit any unexpended balances before an advance of funds is made under the new bond in order that the liability of the sureties on the respective bonds may be definitely fixed.

The requirement of depositing unexpended balances of funds upon renewal of bond has been modified from time to time with the approval of the Comptroller General. For example, if an officer is stationed remote from a United States depository, the transfer of funds to some other proper disbursing officer or agent is authorized. When it is not practicable for disbursing officers to deposit their official funds or to transfer unexpended balances to another disbursing officer, upon renewal of bond, it is required that at least two disinterested persons be designated to verify the cash on hand, such verification of cash to be made by actual count.

There are many instances, particularly in time of war, where disbursing officers are serving under conditions which make it impracticable to follow any of the procedures previously stated with respect to deposit, transfer, or verification of official funds upon renewal of bonds. By an amendment enacted March 8, 1928, it was provided that the payment and acceptance of the annual premium on corporate surety bonds furnished by postal officers and employees shall be a compliance with the requirement for the renewal of such bonds within the meaning of the act of March 2, 1895. The bill, S. 1647, would apply to bonded officers and enlisted men of the Navy, Marine Corps, and Coast Guard, the same procedure now provided by law for postal officers and employees, thus obviating the necessity for renewal of bonds each 4 years.

The CHAIRMAN. Now, suppose you read the letter from the Treasury Department.

Commander BROWN. This letter is from the Secretary of the Treasury addressed to the chairman of this committee. [Reading:]

There has come to the attention of this Department the fact that your committee has before it for consideration H. R. 4030, a bill to amend the act approved March 2, 1895, as amended.

The proposed bill as introduced at the request of the Navy Department would provide that the payment and acceptance of the annual premiums on corporate surety bonds would be a compliance with the requirement for the renewal of such bonds in the case of officers and enlisted men of the Navy, Marine Corps, and Coast Guard. This would have the effect of extending existing law now applicable to postal officers and employees to cover bonded

officers and enlisted men in the Naval Establishment, including the Marine Corps and Coast Guard. It is noted that the Senate passed the companion bill (S. 1647) on February 15, 1944, amended to include bonded officers and enlisted men of the Army.

The Treasury Department believes that such legislation should apply uniformly to the entire Federal service, and has, in the past, advocated the elimination of the mandatory requirement that official bonds be renewed every 4 years. Therefore, it is recommended that consideration be given H. R. 4030 with a view to broadening its provisions to include all bonded officers and employees of the States.

The suggested change could be accomplished by inserting wording in H. R. 4030 which would make that part of the bill after the word "following" read as follows: ", officers and employees of other civilian agencies of the United States and bonded officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard."

It is understood that the Comptroller General of the United States concurs in the recommendation that the benefits of this provision of law be extended to cover all bonded officers and employees of the United States.

Very truly yours,

D. W. BELL,
Acting Secretary of the Treasury.

The CHAIRMAN. Then the effect of this bill would be to do away with the requirements of the law which require the renewal of a bond every 4 years, and the winding up of the bonded officer's accounts, the accounting of his money, and the transfer of that to some agency or to some other place.

What you propose to do now is to post the premium on the bond and that keeps the officer still bonded?

Commander BROWN. That is correct, Mr. Chairman. The practical effect would be that when the officer goes to accountable duty and takes out a bond, he is required by law in the Navy to be bonded as long as he is on that accountable duty, whether it is 2 years or 6 years, and the original bond that he takes out when he goes on duty continues as long as he is on that duty, and he is required to make payment of the premium.

The CHAIRMAN. Who pays the premium of a paymaster, for instance?

Commander BROWN. He, himself, is required by law to pay it.

The CHAIRMAN. It comes out of his pocket?

Commander BROWN. Yes.

The CHAIRMAN. Is he reimbursed?

Commander BROWN. He is not reimbursed.

The CHAIRMAN. Then, a paymaster on a ship assigned to duty as a paymaster in charge of Government funds posts the bond, writes the bond, makes arrangements with the bonding and surety company, and he pays the premium out of his own pocket?

Commander BROWN. Yes, out of his own pocket. In fact, there is a statute which prohibits appropriated funds from being used for the payment of premiums on bonds in any case.

The CHAIRMAN. The Government, then, does not pay the premium on the bond?

Commander BROWN. Not in any case.

The CHAIRMAN. As a rule, what is the average bond of a paymaster on a ship?

Commander BROWN. It is a fixed amount of $10,000.

The CHAIRMAN. What is the premium on a $10,000 bond?

Commander BROWN. $10.

The CHAIRMAN. And he pays that?

Commander BROWN. Yes.

The CHAIRMAN. Under the law, at the end of 4 years, he has got to balance his books and have his accounts checked to see if the bonding company owes the Government anything.

Commander BROWN. That was the original theory.

The CHAIRMAN. Now, you propose to continue him under the bond by merely a continued payment of the premium.

Commander BROWN. A continued payment of the premium which would continue the old bond instead of the renewal.

The CHAIRMAN. That is right, and the Treasury Department and the Comptroller by that letter want it extended to all branches of the Government?

Commander BROWN. That is correct.

The CHAIRMAN. What are the views of the members of the committee?

Mr. JOHNSON of California. Is it not a good idea to check up on a man every 4 years and also the bonding company that writes the bond, to see if they are still solvent?

Commander BROWN. That, of course, is done automatically. When I am about to be bonded, I can select my own bonding company, but only those bonding companies that have been approved by the Treasury, and there are lists of those bonding companies kept up to date by the Department so it is known at all times which companies are solvent and the other companies will not be on the list.

Mr. JOHNSON of California. Does the Department keep checking those companies?

Commander BROWN. Oh, yes. That is done by the Treasury.

Mr. JOHNSON of California. If a bond is to continue for 10 years, will they check the company?

Commander BROWN. That is correct, sir.

The CHAIRMAN. Then the renewal of the premium does not cost as much as writing a new bond?

Commander BROWN. There is no difference in the cost to the individual officers.

The CHAIRMAN. Is it the same?

Commander BROWN. It is the same. Of course, there is the paper work involved.

The CHAIRMAN. What is the saving to the Government changing from the act of 1895 to your proposal? Is it merely the accounting and the balancing of the accounts of the officer?

Commander BROWN. On the very day that his bond expires he might be aboard a vessel and that vessel may be somewhere in action. In such case, it would be impossible for him to get two officers, line officers, to count all his cash for him so that he could renew his bond on that day.

The CHAIRMAN. The Treasury Department's proposal, in view of the Comptroller General's decision in the matter looks all right to me. I see no objection to it.

Commander BROWN. It is. They want it to cover all the Government employees; just what the Navy is advocating for its officers.

Mr. COLE. Is there any periodic auditing of the books and accounts of a bonded officer?

Commander BROWN. Oh, yes.

Mr. COLE. How frequently is that?

Commander BROWN. It is done in various ways. In the case of accountable officers of the Navy, we have our own inspectors. We have a general inspector of the Supply

Corps, an office created by statute, and they will make surprise inspections of the accounts of an officer.

Mr. COLE. How frequently do they do that on an average —once a year?

Commander BROWN. Well, it is very hard to say exactly how frequently they might inspect an individual officer.

Mr. COLE. It would certainly not be longer than at 4-year intervals.

Commander BROWN. Of course, everything in connection with any expenditures is subject to careful scrutiny in connection with the submission of all his returns to the Comptroller General, and then in addition to that, the Comptroller General has authority under law to send his inspectors to inspect accounts of any officer, any accountable officer in the Navy.

Mr. COLE. The only advantage I can see in requiring a renewal of the bond every 4 years is to establish a practice of a definite accounting of the man's work at periodic intervals. If that is done anyway, irrespective of the bond phase of it, I see no harm in removing the requirement of a 4-year renewal.

The CHAIRMAN. Commander Brown just developed an important fact there. You say that the Comptroller can have the accounts audited at any time, that the Comptroller can send his inspectors from his office to any bonded employee or officer of the Navy at any time?

Commander BROWN. Of the Government, Mr. Chairman.

The CHAIRMAN. In addition to that, you also have your own staff?

Commander BROWN. Yes.

The CHAIRMAN. Have you found many instances where there were errors or shortages in the accounts? How does that run?

Commander BROWN. Do you mean the extent of that in these times?

The CHAIRMAN. Yes.

Commander BROWN. I would say, Mr. Chairman, that considering the millions and millions of dollars that are expended now by our disbursing officers and the many people we have had to bring in to the corps, paymasters, those cases are remarkably small. Of course, now and then you do find some things.

The CHAIRMAN. And you will call on that officer to balance his own account out of his own fund?

Commander BROWN. Well, of course, that is a broad field. The matter would be thoroughly investigated and after it is determined that he is financially responsible, either he or the bonding company have to pay up.

The CHAIRMAN. Have there been any courts martial or prosecutions for embezzlement or misappropriation of funds on account of the great volume of business that is going on?

Commander BROWN. It has been remarkably small. There have been some, but very few.

The CHAIRMAN. It would be just like it would be in banks, or any place else?

Mr. HEIDINGER. If it developed that the shortages were not due to the fault of the officer, you would not require him to pay it then?

Commander BROWN. No, sir. That is what I meant before—even before it is decided whether it is a question for a court martial, the matter is thoroughly investigated by a board.

The CHAIRMAN. Say, for example, that the paymaster is on a ship and the ship goes down and all his records are lost. How do you reestablish those records, and what do you do?

Commander BROWN. There are two questions involved in that. Of course, the most important one is the financial responsibility of the officer. We have statutory authority under which he may be relieved in such a case. As to how we establish the amounts involved, there are two things, of course. We have the one case where the records and the money goes to the bottom of the ocean, but the officer is saved. There are other cases where the officer is lost also.

The CHAIRMAN. Take the case where the money and the records go to the bottom of the ocean and the officer is saved. What do you do in cases of that kind? Do you just wipe it off and go on and start all over again?

Commander BROWN. In effect, it is wiped out. Naturally, under the act of July 1919 that would happen. In order to establish how much was involved, his whole accounts are recomputed by an office that we have for that very purpose. We have all his previous returns which are considered, and on the basis of his previous vouchers and returns, taking into consideration how much money has been placed to his credit by the Treasury, we reconstruct his

accounts, make a report of the reconstructed account to the Secretary of the Navy and the Paymaster General of the Navy recommends that he be relieved of any accountability, setting forth all the circumstances of record, together with his reconstructed account.

The CHAIRMAN. You start him all over again?

Commander BROWN. Yes.

The CHAIRMAN. What is the pleasure of the committee with reference to adopting the amendment suggested by the Treasury Department?

Mr. COLE. Why not have the Judge Advocate draft a proper bill so that the entire proviso, as amended in accordance with the recommendations of the committee, will appear in the bill itself, because I am sure we will encounter some criticism from the Members on the floor.

The CHAIRMAN. Without objection, we will let the Judge Advocate General do that. The bill will be favorably reported, and I will ask Mr. Grant to report the bill.

Calendar No. 690

78TH CONGRESS
2d Session

REPORT
No. 676

SENATE

AMENDING THE ACT APPROVED MARCH 2, 1895, AS AMENDED

FEBRUARY 3 (legislative day, JANUARY 24), 1944.—Ordered to be printed

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Mr. WALSH of Massachusetts, from the Committee on Naval Affairs, submitted the following

REPORT

[To accompany S. 1647]

The Committee on Naval Affairs, to whom was referred the bill (S. 1647) to amend the act approved March 2, 1895, as amended, having considered the same, report favorably thereon with an amendment, and recommend that the bill do pass.

The purpose of the bill is to amend the act approved March 2, 1895 (6 U.S.C. 3) as amended, so that it will provide that the payment and acceptance of the annual premiums on corporate surety bonds shall be a compliance with the requirement for renewal of such bonds of bonded

officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard. At present the law so provides as to postal officers and employees and the bill would extend the provision to cover bonded officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard.

Under the act of March 2, 1895, every official charged with the approval of official bonds is required to cause all bonds under his cognizance to be renewed every 4 years or oftener if deemed necessary. Treasury Department Circular No. 197, issued December 1, 1898 (5 Comp. Dec. 988), requires that, upon the execution of a new bond, the bonded officer or man must close out his accounts under the old bond and deposit any unexpended balances before any advances are made under the new bond.

Literal compliance with these instructions in a number of cases is impossible and, with the approval of the Comptroller General, they have been modified to permit an officer to deposit funds needed for immediate use with some other proper disbursing officer, if it is not practicable to deposit any unexpended balances. When even this procedure is not feasible, officers outside the United States have retained their unexpended balances but have had such balances verified by two disinterested persons and have supported their accounts current under the old bonds with certificates signed by such persons.

To follow any of the above procedures is impossible in many cases, particularly in time of war, and the bill, by eliminating the requirement for formal renewal of bonds every 4 years, would correct such situations.

The amendment to the act of March 2, 1895, by the act of March 8, 1928 (45 Stat. 247) was enacted, apparently at the behest of the Post Office Department following the receipt by that Department of an opinion of the Comptroller General (7 Comp. Gen. 43) to the effect that annual payment of premiums on corporate surety bonds could not be construed as compliance with the provisions of the act of March 2, 1895, requiring renewal of such bonds every 4 years.

In urging a relaxation of the requirement for renewal of bonds, the Postmaster General in a letter to the Comptroller General dated June 16, 1927, invited attention to the large amount of effort and expense incident thereto and the fact that little or nothing was accomplished in

protecting the Government's financial interests by having a new document executed every 4 years. These arguments would apply with equal or greater force to the situation now prevailing in the Army and Navy.

The bill, if enacted into law, would involve no additional expense to the Government.

The bill was introduced at the request of the Navy Department.

At the request of the War Department, the bill was amended by the committee to include the Army.

The bill meets with the approval of the Comptroller General, and has been cleared by the Bureau of the Budget.

OFFICIAL BONDS—PREPARATION, SURETIES, RENEWAL, NOTICES OF APPROVAL, ADVANCES, ETC.

1905
Department Circular No. 65.

Division of Appointments.

TREASURY DEPARTMENT,
Office of the Secretary,
Washington, May 29, 1905.

To Principal Officers in and Under the Treasury Department:

Upon the appointment of an officer required to give bond which is to be approved by the Secretary of the Treasury, the necessary form will be prepared in this office (Division of Appointments) and forwarded to him for execution, but in no case, except by express order of the Secretary, shall *blank* bonds be furnished to any person, and no bonds prepared elsewhere or executed in nonconformity with the requirements of this office will be accepted.

A duly qualified corporate surety company is preferred by the Department as surety, but two or more individuals, able to justify in unencumbered real estate to the amount of double the penalty of the bond, may be accepted.

Individual sureties are required by law to furnish every two years, and as much oftener as the Secretary of the Treasury may require, satisfactory evidence of their con-

tinued solvency, duly certified by the proper officer of the court.

Each form of bond sent to an officer for execution will be accompanied by a list of the corporate surety companies which have complied with the provisions of the act of Congress approved August 13, 1894 (ch. 282, Sec. I; 28 Stat., 279), and which are authorized to execute, as *sole* surety, any recognizance, stipulation, bond, or undertaking in which the United States is interested.

The list will show the qualification of the respective companies in the several judicial districts, as indicated by powers of attorney filed in this Department. They are authorized to do business *only* in the jurisdictions wherein they have appointed proper representatives as required by law. Their acceptability is further subject to a literal compliance with the rules and regulations of the Department governing the form and execution of bonds, contracts, etc.

Official bonds are required by law to be renewed every four years. Renewal at more frequent intervals for the purpose of substituting one corporate company for another will not be permitted.

Officers having a corporate company as surety on their bonds are required to forward to the Department the company's receipts for the payment of annual premiums.

Notice of the date, amount, and approval of bonds will be promptly furnished to all officers interested therein, and no advance of money shall be made to a bonded officer until such notice has been received from this office.

Advances of funds shall not be made to bonded disbursing officers in excess of the penalties of their bonds, except upon the written authority of the Secretary. Whenever such advances are required by the demands of public business, a written statement of the necessity therefor must be submitted to this Department for consideration by the Secretary before the said authority will be given. This regulation is not to be construed as requiring additional authority for advances in excess of the penalties of bonds in cases where general authority therefor has already been given.

LESLIE M. SHAW,
Secretary.

ACCEPTANCE OF BONDS, NOTES OR OTHER OBLIGATIONS ISSUED OR GUARANTEED BY THE UNITED STATES AS SECURITY IN LIEU OF SURETY OR SURETIES ON PENAL BONDS

1934
Department Circular No. 154 [1]
(Revised)

Commissioner of Accounts
and Deposits

TREASURY DEPARTMENT,
Office of the Secretary,
Washington, February 6, 1935.

To Bond-Approving Officers, the Treasurer of the United States, Federal Reserve Banks, and Others Concerned:

Treasury Department Circular No. 154 (revised), dated April 30, 1926, is hereby amended and supplemented so as to read as follows:

The following rules and regulations are prescribed for carrying into effect section 1126 of the Revenue Act of 1926, approved February 26, 1926, as amended by the act of February 4, 1935, which provides as follows:

* * * * * * * * * *

I. BOND-APPROVING OFFICERS

1. The term "bond-approving officers" as used in this circular means the head of an executive department or Government establishment or an officer designated either by law or regulation to approve "penal bonds." The Treasury of the United States assumes no responsibility or liability on account of the acts of bond-approving officers. The term "bond-approving officer" shall be deemed to include the officer's successors in office.

II. ACCEPTANCE OF BONDS OR NOTES BY BOND-APPROVING OFFICERS

2. Any individual, partnership, or corporation required by the laws of the United States or regulations made pursuant thereto to furnish any recognizance, stipulation, bond, guaranty, or undertaking (hereinafter called penal bond), with surety or sureties, may, in lieu of such surety or sureties, deposit as security with the official having au-

thority to approve such penal bond (hereinafter called the bond-approving officer), United States bonds, Treasury notes, or other public debt obligations of the United States, or obligations which are unconditionally guaranteed as to both interest and principal by the United States (all of which classes of obligations are hereinafter called "bonds or notes"), in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form hereinafter prescribed, authorizing the bond-approving officer to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such bonds or notes in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, postoffice money orders, or cash, for the penalty or amount of such penal bond. The term "par value" as applied in this circular to bonds or notes not issued on a discount basis means the stated dollar amount thereof; i. e., the denominational amount, such as $100, $500, and $1,000; and as applied to bonds or notes issued on a discount basis means the dollar amount which the holder is entitled to receive at maturity or the next following date of redemption at the option of the holder, whichever amount is less. In order to avoid the frequent substitution of bonds or notes, bond-approving officers will not receive a bond or note which matures or, at the option of the holder, may be redeemed within 30 days of the date of deposit; and any bond-approving officer may refuse to receive bonds or notes which mature or, at the option of the holder, may be redeemed within a year of the date of deposit, in cases where he rules that deposit of such bonds or notes might lead to frequent substitutions.

3. The individual, partnership, or corporation required to furnish any penal bond, who deposits bonds or notes as security in lieu of surety or sureties in accordance with the provisions of this circular, must be the owner of the bonds or notes deposited, and is hereinafter called the obligor. Bonds or notes may be deposited with bond-approving officers pursuant to the provisions of this circular in either coupon or registered form. Coupon bonds or notes shall have attached thereto all coupons unmatured at the date of

such deposit, and all matured coupons should be detached. Registered bonds or notes must be registered in the name of the obligor. They need not be assigned, and must not be assigned to the bond-approving officer. Bonds registered in the name of the obligor may, however, bear assignment in blank or to the Secretary of the Treasury for exchange for coupon bonds.

4. The bonds or notes to be deposited must in every case be delivered to the bond-approving officer at the obligor's risk and expense. Coupon bonds or notes and registered bonds or notes assigned in blank or for exchange for coupon bonds or notes cannot safely be forwarded by registered mail unless insured by the obligor against risk of loss in transit. Registered bonds or notes, unless assigned in blank or for exchange for coupon bonds or notes, need not be so insured when forwarded by registered mail, unless the obligor so elects. The bond-approving officer shall issue a receipt in duplicate, substantially in form A, hereto attached, for the bonds or notes so deposited, the original of the receipt to be given to the obligor and the duplicate to be retained by the bond-approving officer for his files.

5. At the time of the deposit of any bonds or notes with a bond-approving officer in accordance with the provisions of this circular, the obligor shall deliver to the bond-approving officer a duly executed power of attorney and agreement, in favor of the bond-approving officer, authorizing such officer to collect or sell, assign, and transfer, such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of the penal bond, and to apply the proceeds of such sale or collection, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of such default. The power of attorney and agreements shall not be revocable by the obligor; and, in the case of an individual, shall be substantially in form C, hereto attached; in the case of a partnership, substantially in form D, hereto attached; and in the case of a corporation, substantially in form E, hereto attached.

6. In connection with the acceptance of bonds or notes hereunder as security in lieu of surety or sureties, bond-approving officers must satisfy themselves as to the ownership of the bonds or notes deposited and the sufficiency of the power of attorney and agreement, and in the case of

registered bonds or notes, as to the regularity of the assignments as well, and, in general, that the deposit is made in conformity with the provisions of this circular.

7. Any obligor who deposits bonds or notes in accordance with the provisions of this circular may, upon written application to and with the approval of the bond-approving officer, substitute for the bonds or notes to deposited (*a*) other bonds or notes in a sum equal at their par value to not less than the par amount of the bonds or notes to be withdrawn upon compliance with all the provisions of this circular applicable to an original deposit of bonds or notes in lieu of surety or sureties, or (*b*) a penal bond with surety or sureties or such other security as may be allowed by law. The bonds or notes withdrawn shall be returned in the manner hereinafter provided for the return of bonds and notes deposited.

III. Deposits of Bonds or Notes by Bond-Approving Officers with Depositaries

* * * * * * * * * *

12. As soon as security for the performance of the penal bond is no longer necessary, the bonds or notes deposited in lieu of surety or sureties on such penal bond, together with the power of attorney and agreement accompanying such bonds or notes, shall be returned to the obligor by the bond-approving officer, without application therefor from the obligor. The determination of the question whether security is any longer necessary for the performance of the penal bond shall rest with the bond-approving officer and such other officers as shall have jurisdiction in the premises under the provisions of law and administrative regulations which may be applicable; provided, however, that in case a person or persons supplying labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811), entitled "An Act to amend an Act approved August 13, 1894, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,' " shall file with the obligee, at any time after a default in the performance of any contract subject to said acts, the application and affidavit therein provided, neither the obligee nor the bond-approving officer shall deliver to the obligor the deposited bonds or notes or any surplus proceeds thereof until the expiration of the time limited

by said acts for the institution of suit by such person or persons (viz, 1 year from the date of final settlement of the contract for the performance of which the bonds or notes were pledged), and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof; provided, further, that nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said acts or under this circular to the United States for default upon any obligation of said penal bond.

* * * * * * * * * *

V. Form of Penal Bonds With Bonds or Notes as Security

16. Penal bonds on which bonds or notes are accepted as security in lieu of surety or sureties may be substantially in form F, hereto attached. Administrative offices of the Government may, however, use other forms of penal bonds appropriate to the work of their respective offices, provided that upon the execution of the penal bond the principal shall indorse on the face thereof and sign the following statement:

The securities described in the annexed schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with section 1126 of the Revenue Act of 1926, as amended, and Treasury Department Circular No. 154, dated February 6, 1935.

.....

Principal on the above bond.

17. Nothing contained in this circular shall be construed as modifying the existing practice or duties of administrative offices in handling penal bonds, except to the extent made necessary under the terms of this circular, by reason of the acceptance of bonds or notes as security in lieu of surety or sureties thereon.

VI. Special Provisions

* * * * * * * * * *

20. *Other departments and establishments.*—Bond-approving officers of other departments and establishments of

the Government accepting bonds or notes in lieu of surety or sureties under the provisions of section 1126 of the Revenue Act of 1926, as amended, shall be governed by the provisions of this circular. This circular may be modified or amended only upon the approval of the Secretary of the Treasury.

FORM F

FORM OF PENAL BOND FOR EXECUTION BY INDIVIDUALS, PARTNERSHIPS, OR CORPORATIONS WHERE ELIGIBLE SECURITIES ARE ACCEPTED AS SECURITY IN LIEU OF SURETY OR SURETIES.

Know all men by these presents, that ...., ..., of the city of ....., and State of ....., as obligor, ... held and firmly bound unto the United States of America, in the penal sum of ..... dollars ($.....), lawful money of the United States, for the payment of which sum, well and truly to be made to the United States, without relief from valuation or appraisement laws, ... bind ....., ... heirs, executors, administrators, successors, and assigns, firmly by these presents.

The condition of the above obligation is such that ..... (Insert conditions and stipulations appropriate to the penal bond)

The above-bounded obligor, in order the more fully to secure the United States in the payment of the aforementioned sum, hereby pledges as security therefor, in accordance with the provisions of section 1126 of the Revenue Act of 1926, as amended, securities in the principal sum of ..... dollars ($.....), which said securities are numbered serially, are in the denominations and amounts, and are otherwise more particularly described as follows:

. . . .

. . . .

. . . .

which said securities have this day been deposited with ..... and his
(Name and official title of bond-approving officer)
receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of .....,
(Name and official title of bond-approving officer)
authorizing and empowering said officer as such attorney to collect or sell the above-described securities so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

In witness whereof, this bond has been signed, sealed, and delivered by the above-named obligor, this ..... day of ....., 19.....

..... [SEAL.]

..... [SEAL.]

Signed, sealed, and delivered in the presence of:

.....
(Name)

.....
(Address)

.....
(Name)

.....
(Address)

REGULATIONS WITH RESPECT TO THE RENEWAL OF BONDS APPROVED BY THE SECRETARY OF THE TREASURY. .

1946
Department Circular No. 745 Revised
Fiscal Service
Bureau of Accounts

March 18, 1946
Treasury Department
Office of the Secretary
Washington, D. C.

To Heads of Executive Departments, Establishments, and Agencies, and Others Concerned:

Department Circular No. 745, dated July 10, 1944, requires that every officer and employee from whom a corporate surety bond is received and approved by the Secretary of the Treasury shall furnish a receipt showing payment of the premium for each year during which he continues to operate under such bond.

Actual operation of the premium receipt procedure for nearly two years has demonstrated that it is difficult to secure properly executed receipts in many cases. This has led to inconvenience and added expense, and the Treasury has, accordingly, determined that it would be to the best interest of the Government to revert to the former bond renewal plan.

Therefore, Department Circular No. 745, dated July 10, 1944, is hereby revised to read as follows:

> Effective April 1, 1946, every officer and employee who has given or thereafter gives an official bond which is required to be furnished to and approved by the Secretary of the Treasury, shall every four years after the date of such bond furnish a new bond, but the Secretary of the Treasury may require any such bond to be renewed or strengthened oftener if he deems such action necessary. Renewals of existing bonds shall be effected as follows:
>
> (a) Bonds which are less than four years old on April 1, 1946, shall be renewed on the first 4-year anniversary date of the bond. Pending renewal,

premium receipts will not be required to be submitted to the Treasury Department.

(b) Bonds which are four years old on April 1, 1946, shall be renewed as soon as possible, effective April 1, 1946.

(c) Bonds which are more than four years old on April 1, 1946, shall be renewed on the next premium anniversary date of the bond.

Original and renewal bonds shall be forwarded through the usual departmental or agency channels to the Section of Surety Bonds, Bureau of Accounts, Treasury Department. Renewal bonds must be forwarded promptly.

O. MAX GARDNER
Acting Secretary of the Treasury

Postmaster's Gazette
May, 1948.

BROADER PROTECTION GIVEN POSTMASTERS BY INSPECTION SERVICE BOND INTERPRETATION.

The unsolicited letter below from Chief Post Office Inspector James J. Doran is greatly appreciated, indicating as it does a desire on the part of that important branch of the postal service to be helpful to postmasters in handling claims for shortage in such a manner, if possible, as to relieve postmasters of liability in cases where they are not directly responsible. Mr. Doran's letter follows:

POST OFFICE DEPARTMENT

Chief Post Office Inspector

Washington 25, D. C.

Mr. Dan Gibson
Postmaster
Albany, Georgia

March 15, 1948

Dear Dan:

* * * * * * * * * * *

The Inspection Service has never been satisfied to collect monies from postmasters in order to bring certain of their

accounts into balance when the cause of such shortages was the result of embezzlement by some person other than the postmaster. Particularly have we been concerned with situations where the bond of a defaulting supervisor or employee was not considered sufficient in amount to cover the entire sum of the defalcation. For a long time this Service has been studying the matter, and after a thorough analysis of the contents and nature of the surety bonds, we arrived at the decision that the payment of an annual premium made the bond a new bond each year. In other words, if a defaulting person employed by the Postal Service had furnished a surety bond for $10,000 and had paid annual premiums on it for four years, we construed that to mean that he had furnished a bond to the Post Office Department that would cover defalcations up to $40,000, providing not more than the penalty of the bond, $10,000, had been embezzled in any one year. The bond, in our opinion, increased by the amount for which it was written each year, providing a premium had been asked for by the surety company and had been paid to such company.

A particular case in point was that of an employee whose bond was $2,000 and who had embezzled funds to the extent of more than $7,500 over a period of years. That particular clerk, after his defalcations were found by inspectors, repaid certain sums over a period of time, leaving a balance due the Department of more than $3,800. The surety company that had furnished bond for the defaulting employee indicated a desire to pay us $2,000, which that company represented was the total of their liability. This we declined to accept, maintaining that the bond was for $2,000 for each year it was in existence, providing, of course, that the annual premiums had been paid.

We asked the Solicitor for the Post Office Department for an opinion, setting forth the evidence as contained in the bond and our reasons why it should be construed as having an accumulative responsibility. The Solicitor, after considerable study, agreed with our views, and later the Department of Justice gave us an opinion that we were on the right track. The Department of Justice later ordered a suit to be filed—not for the $2,000 but for the total amount still due the Department, a sum of over $3,800. The suit came to trial a short while ago and the Court, after hearing the evidence, rendered a decision along the lines set forth in this communication. A judgment for the full amount of the balance due, plus interest, was ordered paid by the de-

fendant, which in this particular instance was the surety company that had furnished the bond.

Of course we are looking forward to seeing this judgment appealed by the surety company, and there is every reason to believe that the case may go in time to the Supreme Court of the United States. Naturally we hope for an affirmation of the decision of the lower Court.

We realize that this is a long step from the previous opinion held that the penalty of the bond was the total amount for which the surety company was responsible. We have one case pending at the present time which we hope will be set for trial in the near future where the defaulting employee, a supervisor, furnished bond to the extent of $22,000, which amount the surety company is quite willing to pay. We have prorated the embezzlements, and in only one year did the employee embezzle more than the amount of the bond in effect for that year. Instead of making a demand on the surety company or asking the Department of Justice to institute a suit for the $22,000, we have made a demand of more than $75,000 and have asked the Department of Justice to enter suit for that amount. The case is already on the calendar and, as I have said before, we hope will soon reach the trial stage.

In the event we should be successful in this case or there is a reversal in the previous case in the higher courts, we hope all of it will lead to a very thorough study of the necessity for getting the type and kind of surety bonds that will protect the Post Office Department to the fullest possible extent consistent with fair payment to the surety companies.

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I am sure you will realize by the recital of the facts herein that this is a matter which has not received light or passing attention by this Service. For years we have been interested in it, but the time was not opportune until within the past two years for a definite attitude upon what the surety companies considered their responsibility. This is the kind of work that the Inspection Service, in the opinion of the writer, was established to do. This is the kind of work we hope to continue to do.

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With best wishes, I am

Sincerely yours,

J. J. DORAN,
Chief Inspector.